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IN THE

Supreme Court of the United States

October Term, 1957

No. 305

In the Matter

of

SLEEP PRODUCTS, INC.,

Bankrupt.

LOCAL 140 SECURITY FUND,

Petitioner,

WILLIAM S. HACK, Trustee.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The brief submitted by respondent in opposition to the petition for a writ of certiorari serves to make more clear the compelling reasons for granting the writ.

1. In the short period since the petition was drawn, there have been two additional District Court decisions, both referred to in respondent's brief. The first of these, *In re Embassy Restaurant, Inc.* — F. S. —, 26 U. S. Law Week 2027 (D. C., Pa., June 28, 1957), held that the claims of a security fund in circumstances such as these were entitled to priority. The second, *In re Victory Apparel Mfg. Corp.*, — F. S. —, 26 U. S. Law Week 2059 (D. C. N. J., July 17, 1957), held to the contrary.

Thus, as matters now stand, there are (aside from the instant case) four District Court decisions on the subject,

two of which have upheld a claim of priority and two of which have denied such claim. We are advised that the number of cases pending before referees throughout the country is increasing substantially.

2. Respondent concedes that *United States* v. *Carter*, 353 U. S. 210, bears "a surface similarity" to the instant case (Resp. br., p. 10). Certainly it is, in spirit, contrary to the decision of the Court of Appeals in this case. Whether the spirit of that ruling can be applied to a case arising under the Bankruptcy Act goes to the merits of petitioner's claim and can be argued fully if this petition is granted.

3. Respondent urges that there is no conflict between courts of appeals and that hence the petition should be denied. It would be unfortunate if this Court were to withhold the granting of a petition to review this issue until such conflict has developed. As appears from an examination of the cases already decided, the amount involved in each case is frequently small, as indeed is usually the case with claims arising out of small business bankruptcies. In the instant case, for example, the cost of an appeal is likely to be considerably greater than the amount which might be realized by petitioner if it is successful. Despite this, petitioner has decided to proceed with this case, in the hope that the matter can here be settled. It would be unreasonable to require other Funds similarly situated to expend trust moneys in litigation when the matter can be decided expeditiously now. There can hardly be any question that a conflict of opinion in the courts of appeals will ultimately develop, in view of the wide diversity of opinion now shown in the district courts.

The importance of uniformity in the administration of the Bankruptcy Law is well established. There is no wisdom in permitting the continuance of expensive litigation, especially as the ultimate parties in interest are the working men and women whom the Act was designed to protect.

4. Briefs in opposition have also been filed by several of the claimants. These briefs in substance repeat the argument of the respondent. Furthermore, we do not understand that claimants have the right to file briefs under the circumstances here presented. They are not parties to this action, and no reason is shown why they are not adequately represented by the trustee.

Dated: September 3, 1957.

Respectfully submitted,

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